

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel.
THOMAS J. MILLER, 99AG25112
ATTORNEY GENERAL OF IOWA

Plaintiff,

v.

ROGER T. CARLSON and
CARLSON TECHNOLOGIES, INC.
d/b/a/ TRI-STAR DISTRIBUTING,

Defendants.

EQUITY NO. CE

51749

PETITION

CLERK DISTRICT COURT

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POLK COUNTY IA

FILED

COMES NOW the State of Iowa ex rel. Attorney General of Iowa, Thomas J. Miller, by Assistant Attorney General Benjamin E. Bellus, pursuant to the provisions of Iowa Code § 714.16 (2005), commonly referred to as the Iowa Consumer Fraud Act, and for its claim against Defendants Roger T. Carlson and Carlson Technologies, Inc., d/b/a Tri-Star Distributing, states as follows:

INTRODUCTION

1. Roger Carlson and Carlson Technologies, Inc., sell and service vacuum cleaners and other home care products through telemarketing and door-to-door sales. Although sometimes straying from their standard scheme, Carlson and Carlson Technologies, Inc. normally make initial contact with potential customers by telephoning Iowans under the auspices of performing marketing research. Consumers are encouraged to answer personal questions by the representation that they might win a valuable prize if they cooperate in a survey. In fact, the research is performed solely to screen Iowans for a visit by a door-to-door salesman and all consumers that meet the screening criteria are called back and informed that they have won, or have been awarded, a valuable voucher for a free hotel stay at a vacation destination site such as Miami Beach, Florida or Puerto Vallarta, Mexico. The vouchers are of negligible cost to Carlson and Carlson Technologies and are little more

than promotional devices for the vacation sites. However, consumers are required to let salesmen from Carlson Technologies hand-deliver these vouchers to their homes. Once the salesmen are inside the consumers' homes, many consumers are required to submit to overly-aggressive, misleading and/or illegal sales efforts by the salesmen in order to receive their voucher. Even then, not all consumers receive their vouchers. Once a sale is made, Carlson and Carlson Technologies Inc, often refuse to honor legitimate cancellations and regularly refuse to correct, or even respond to, consumer complaints.

VENUE

2. Venue is proper in Polk County, Iowa, because the Defendants have engaged and, upon information and belief, continue to engage in the activities that are the subject of this Petition in Polk County, Iowa. Moreover, upon information and belief the Defendants do business in Polk County and one or more victims of the practices in question reside in Polk County. Iowa Code § 714.16 (10) (2005).

PARTIES

3. Plaintiff is the State of Iowa, ex rel. Attorney General Thomas J. Miller, the duly elected Attorney General of Iowa. The Attorney General of Iowa is expressly authorized pursuant to Iowa Code § 714.16(7) to file a civil action against any person who has engaged in a practice declared to be unlawful under Iowa Code § 714.16.

4. Defendant Roger T. Carlson owns, operates and manages a door-to-door sales business which was incorporated under the name Carlson Technologies, Inc. His business address was 7250 University Avenue, Suite 2, Des Moines, Iowa until some time in 2004 when he moved to 2190 N.W.82nd Street, #1, Clive, Iowa. Defendant Roger T. Carlson is named in his individual capacity as well as his past or present corporate capacities.

5. Defendant Roger T. Carlson formulated, controlled, was a primary participant in, and had, or should have had, knowledge of the acts and practices of Carlson Technologies, Inc. d/b/a Tri-Star Technologies, constituting the violations of Iowa law as alleged herein and, at all times relevant hereto, was an officer, director, owner, and/or agent of Carlson Technologies, Inc.

6. Defendant Carlson Technologies, Inc. was a Colorado corporation doing business under the trade name of Tri-Star Technologies from July 28, 1997, until the Colorado Secretary of State administratively dissolved the corporation on May 1, 2002. Carlson Technologies was granted a certificate of authority to transact business in Iowa by the Iowa Secretary of State in September of 1997, but said certificate was revoked on August 3, 1998. Carlson Technologies, Inc. sold and serviced home care products; and was located at 7250 University Avenue, Suite 2, Des Moines, Iowa, until some time in 2004 when it was moved to 2190 N.W.82nd Street, #1, Clive, Iowa.

7. Unless otherwise specified, the term "Defendants" as referred to herein includes Roger T. Carlson and Carlson Technologies, Inc.; as well as any corporate name or trade name under which they operated, or are operating, a business; and their representatives, agents, independent contractors, assigns, successors, or other business entities, whose acts, practices or policies are or were directed, formulated or controlled by either Roger T. Carlson and/or Carlson Technologies, Inc.

JURISDICTION

8. The Iowa Consumer Fraud Act, Iowa Code § 714.16 (2)(a) (2005) ("the Consumer Fraud Act") provides in pertinent part:

The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

9. Iowa Code § 714.16(1) provides the following definitions:

(f) "Deception" means an act or practice which has the tendency or capacity to mislead a substantial number of consumers as to a material fact or facts.

(n) "Unfair practice" means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.

10. Iowa Code § 714.16 (7) provides, in pertinent part:

Except in an action for the concealment, suppression, or omission of a material fact with intent that others rely upon it, it is not necessary in an action for reimbursement or an injunction, to allege or to prove reliance, damages, intent to deceive, or that the person who engaged in an unlawful act had knowledge of the falsity of the claim or ignorance of the truth.

11. In describing remedies under the Consumer Fraud Act, Iowa Code subsection 714.16(7) provides in pertinent part as follows:

If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice. The court may make orders or judgments as necessary to prevent the use or employment by a person of any prohibited practices, or which are necessary to restore to any person in interest any moneys ... which have been acquired by means of a practice declared to be unlawful by this section ...

In addition to the remedies otherwise provided for in this subsection, the attorney general may request and the court may impose a civil penalty not to exceed forty thousand dollars per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful under this section; provided, however, a course of conduct shall not be considered to be separate and different violations merely because the conduct is repeated to more than one person. In addition, on the motion of the attorney general or its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of intentional violation of a ... permanent injunction issued under authority of this section.

12. In describing remedies under the Iowa Door-To-Door Sales Act, Iowa Code § 555A.6(2) provides in pertinent part as follows:

A violation of this chapter is a violation of section 714.16, subsection 2, paragraph "a".

FACTUAL ALLEGATIONS

Background

13. Defendants engaged in the business of advertising, marketing, offering to sell and selling merchandise¹, including "Tri-Star" vacuum cleaners and "Pure-Star" air purifiers, through sales presentations in the homes of Iowa consumers.

14. As of March 1, 2002, the Attorney General had received seventeen (17) formal complaints, as well as additional informal inquiries, from Iowa consumers. Based on this information, it appeared that:

- a. Defendants failed to provide a full refund of all money paid by the consumers and/or all property or goods traded in by consumers, within ten (10) business days from receipt of the consumers' notice that the sale was cancelled.
- b. Defendants unfairly diminished consumers' capacity to exercise their three day cancellation rights by disposing of the property that consumers traded in for merchandise sold by Defendants before expiration of the three day cancellation period.
- c. Defendants failed to resolve consumer complaints in a timely manner.
- d. Defendants made deceptive statements as well as omitted material facts, both before and during sales presentations, in a manner including, but not limited to:
 - 1) misrepresenting the real purpose of Defendants' visit to consumers' residence both orally and in writing;
 - 2) failing to inform consumers that they would be required to listen to a sales presentation before receiving a prize, gift or other free merchandise, until after the Defendants were already at the consumers' residence; and
 - 3) misrepresenting that a purchase by a consumer would result in the award of a prize, gift or other free merchandise to the individual that gave the consumer's name to the Defendants.

¹ The term, "merchandise," as used herein, is as defined in Iowa Code § 714.16(1)(i) to include any objects, wares, goods, commodities, intangibles, securities, bonds, debentures, stocks, real estate or services.

- e. Defendants refused to refrain from contacting consumers after being asked to do so.
- f. Defendants represented to consumers that they had “won” a prize, gift or other free merchandise and obtained consumers’ agreement to accept the prize, gift or other free merchandise, but failed to deliver the prize, gift or other free merchandise.
- g. Defendants represented to consumers that they would receive a prize, gift or other free merchandise if they provided Defendants with referrals, but failed to deliver the prize, gift or other free merchandise after consumers provided referrals.
- h. Within their complaints, Iowa consumers alleged that Defendants used abusive and high pressure sales tactics including, but not limited to:
 - 1) remaining in consumers’ residences for extended periods after consumers requested that the sales presentation be ended;
 - 2) employing hostile and/or abusive language when consumers declined to purchase merchandise; and
 - 3) scattering rubbish and trash around consumers’ residence after consumers declined to purchase merchandise.

15. Defendants refused to respond to investigative inquiries from the Attorney General regarding eight (8) separate consumer complaints, causing the Attorney General to serve an investigative subpoena on Defendants on March 1, 2002.

16. On March 18, 2002, Defendant Carlson appeared at the Attorney General’s office in response to the investigative subpoena and gave evidence on behalf of himself and Carlson Technologies, Inc.

The Assurance of Voluntary Compliance (AVC)

17. At the conclusion of his appearance on March 18, 2004, and in exchange for the Attorney General’s agreement to not bring suit against Defendants at that time, Defendant Carlson agreed to an Assurance of Voluntary Compliance (AVC), both individually and as the owner and president of Defendant Carlson Technologies, Inc. (See Attachment)

18. Within the AVC, Defendants agreed that, among other things, the Defendants would:

- a. comply in all respects with the Iowa Door-To-Door Sales Act, Iowa Code chapter 555A;
- b. not make any deceptive or untrue representations to any consumer;
- c. upon each contact with a consumer, promptly disclose the real purpose of the contact using clear and conspicuous language;
- d. before requesting or otherwise seeking consumers' consent to the presence of Defendants at the consumers' residence, inform consumers of the real purpose for the Defendants' presence at consumers' residence using clear and conspicuous language;
- e. before requesting or otherwise seeking consumers' consent to the presence of Defendants at the consumers' residence, inform consumers of all conditions for the delivery of any prize, gift or other free merchandise including, but not limited to, the consumers' participation in a sales presentation;
- f. not dispose of any property or goods that consumers traded in for merchandise until the expiration of the three day cancellation right provided by chapter 555A;
- g. immediately honor all requests from consumers that they not be further contacted by Defendants;
- h. if a prize, gift or other free merchandise was promised to a consumer who agreed to an in-residence presentation; such prize, gift or other free merchandise would be given to the consumer at the beginning of the in-residence visit;
- i. if a prize, gift or other free merchandise was promised to a consumer in exchange for the performance of any act by the consumer other than attendance at an in-residence presentation; such prize, gift or other free merchandise would be given to the consumer immediately upon performance by consumer;
- j. timely respond to consumer complaints received from consumers, or from the Attorney General, within fifteen (15) business days from receipt of the complaints;
- k. not engage in high pressure sales tactics when attempting to sell merchandise; and
- l. pay \$1,000.00 to the State as a civil penalty.

19. Within paragraph 14 of the AVC, Defendants also agreed that:

a violation by [Defendants] of any requirement of this Assurance shall constitute a violation of the Iowa Consumer Fraud Act, Iowa Code § 714.16; and that violations by [Defendants] of any requirements of this Assurance shall constitute a violation of this contractual agreement with the State entitling a court to impose civil penalties against [Defendants] pursuant to Iowa Code § 714.16(7) as if the [Defendants] had violated a court injunction.

Post AVC Conduct

20. John D. Rector:

- a. On or about December 27, 2003, Defendants caused a Bingo-style scratch card to be delivered to the Des Moines residence of John D. Rector and his wife.
- b. The Defendants' Bingo-style card represented that the Rectors could scratch for a free prize, and then provided Defendants' telephone number to be called if the Rectors scratched a winning number.
- c. The Rectors scratched the card and called the Defendants to collect their prize, at which time Defendants' agent told them that a representative had to visit the Rectors' house to verify the winning numbers, and that the Rectors would have to listen to a short sales presentation and complete a short questionnaire.
- d. In response to an inquiry from the Rectors, Defendants' agent specifically assured them that there was no obligation that they buy merchandise in order to receive their "free" prize.
- e. Defendants' agent arrived at 2:30 p.m. and, despite the Rectors' repeated request that he leave, stayed until after 5:30 p.m. - leaving only when the Rectors threatened to call the police.
- f. The Rectors were never given their "free" prize.
- g. On December 29, 2003, the Rectors filed a complaint against the Defendants with the Attorney General.
- h. On January 15, February 17, and August 5, of 2004; the Attorney General sent written inquiries to the Defendants, but received no response.

21. Fred M. Farmer:

- a. On June 9, 2004, Fred M. Farmer, a resident of Clive, Iowa, filed a complaint against the Defendants with the Attorney General.
- b. Within his complaint, Farmer alleged that Defendants had failed to timely repair Farmer's Tri-Star vacuum cleaner which he took to Defendants' shop for repairs, and that Defendants also failed to deliver vacuum cleaner bags for which he had already paid.
- c. On June 21, 2004, and again on July 1, 2004, the Attorney General sent written inquiries to the Defendants, but received no response.

22. Defendants refused to respond to investigative inquiries from the Attorney General for

either the Rector complaint or the Farmer complaint, causing the Attorney General to serve a second investigative subpoena on Defendants on October 12, 2004.

23. On November 4, 2004, Defendant Carlson appeared in response to the second investigative subpoena and gave evidence on behalf of himself and Carlson Technologies, Inc.

24. At the conclusion of his appearance, and in exchange for the Attorney General's agreement to not bring suit against Defendants at that time, Defendant Carlson agreed to cure the complaints of Rector and Farmer, and to pay the State \$500.00 in civil penalties.²

25. Dave Engels:

a. On December 4, 2004, the Defendants sold a Tri-Star vacuum cleaner to Dave Engels, at his residence in Des Moines, Iowa, for which Engels paid \$1,272.00.³

b. On December 6, 2004, Engels sent written notification to Defendants that he was canceling the sale.

c. On December 9, 2004, Defendants' agent collected the Tri-Star vacuum cleaner from Engels, but did not provide a refund.

d. Engels left telephone messages for Defendant Carlson, but received no response.

e. On January 23, 2005, Engels filed a complaint against the Defendants with the Attorney General.

f. On February 8, 2005, the Attorney General sent a written inquiry to the Defendants, but received no response.

g. On February 21, 2005, the Attorney General sent a second written inquiry to the Defendant, but received no response.

h. An Investigator from the Attorney General's office left telephone message for Defendant

² During the testimony, Carlson represented that the consumer complaints had already been corrected. However, subsequent investigation by the State showed that the complaints had not been addressed and Defendants corrected them only after further contact by the State.

³ Defendants represented the sale price as \$2,398.00, plus a "Service Certificate" which cost an additional \$300.00; from which \$1,400.00 was deducted as a "Special Introductory Offer."

Carlson on February 28, March 2, March 3, of 2005; but was never called back.

i. As of this date, Engels has not received a refund for the money paid to Defendants.

26. Jean Plymesser:

a. On or about January 1, 2005, Defendants telephoned Jean Plymesser at her home in Adel, Iowa, and informed her that, because she had supposedly answered a telephone survey at an earlier time, she had "won" a certificate which entitled her to a two-night stay in any one of 80 hotels.

b. The caller informed Plymesser that the certificate could not be mailed, but rather the certificate had to be delivered to her residence by an agent of the Defendants.

c. When Plymesser informed the caller that she did not want to listen to a sales presentation, the caller assured her that she would not have to submit to a sales presentation in order to receive her certificate, but would only have to answer a ten-question questionnaire that would take no more than ten to fifteen minutes to complete.

d. Based on the assurances of the caller, Plymesser agreed to let the Defendants deliver the certificate to her residence.

e. When the Defendants' agent arrived at Plymesser's residence, he insisted that she listen to a sales presentation before she could receive her certificate.

f. When Plymesser refused to listen to a sales presentation, the Defendants' agent left without providing the certificate to her.

g. On January 7, 2005, Plymesser filed a complaint against the Defendants with the Attorney General.

h. On January 31, 2005, the Attorney General sent a written inquiry to the Defendants, but received no response.

i. On February 16, 2005, the Attorney General sent a second written inquiry to the Defendants and received a response denying Plymesser's allegations on February 25, 2005.

j. As of this date, Plymesser has not received her certificate.

27. Diana and Paul Wheeland:

a. On January 25, 2005, the Defendants' agent sold a Tri-Star vacuum cleaner to Diana and Paul Wheeland, at their residence in Des Moines, Iowa, for which the Wheelands agreed to

pay \$2,118.00.⁴

- b. Before they agreed to purchase the vacuum cleaner, the Wheelands expressed concern about the cost of the vacuum cleaner, at which point Defendants' agent called Defendants' office to discuss the Wheelands' concerns and then assured the Wheelands on two different occasions that they had 90 days to return the vacuum cleaner if they were dissatisfied with the machine or could not afford the payments.
 - c. At no time did the Defendants' agent orally inform the Wheelands that they had three business days to cancel the transaction.
 - d. Based on these representations, the Wheelands agreed to purchase the vacuum cleaner and finance the total cost at 21% interest, which added an additional \$754.80 in finance charges to the total cost.
 - e. Before 90 days had passed since the sale, the vacuum cleaner repeatedly malfunctioned and the Wheelands returned it to the Defendants and asked to cancel the sale.
 - f. Rather than cancel the sale, Defendants referred the Wheelands to the finance company, Castle Credit Corporation, which directed the Wheelands back to the Defendants to resolve their dispute.
 - g. When the Wheelands returned to the Defendants as directed by the finance company, Defendants again refused to cancel the contract but took the vacuum cleaner for repairs under the "lifetime" warranty.
 - h. On at least three occasions, the Wheelands contacted Defendants in an effort to gain the return of the vacuum cleaner.
 - i. As of this date, the vacuum cleaner has not been returned to the Wheelands.
 - j. On May 3, 2005, the Wheelands filed a complaint against the Defendants with the Attorney General.
 - k. On May 24, 2005, the Attorney General sent a written inquiry to the Defendants, but received no response.
 - l. As of this time, the finance company is still requiring the Wheelands to make their monthly payments of \$80.00.
28. The Defendants have failed to respond to multiple consumer complaints filed with the

⁴ Defendants represented the sale price as \$2,398.00, plus a "Service Certificate" which cost an additional \$300.00; from which \$700.00 was deducted as a "Special Introductory Offer."

Des Moines Better Business Bureau, and forwarded to the Defendants by the Better Business Bureau.

29. On information and belief, Defendants have on numerous occasions engaged in practices similar to those alleged in paragraphs 1, 13-15, 20-21 and 25-28, above, regarding the sales of merchandise to other consumers.

30. It is in the public interest that permanent injunctive relief be issued herein to protect the people of the State of Iowa from any further losses from any similar conduct by the Defendants in Iowa in the future.

31. The State's petition for injunctive relief has not been presented to, or denied by, any other judge of the district court.

CAUSES OF ACTION

Count I

Violations of Iowa Door-To-Door Sales Act - Iowa Code chapter 555A

32. The State incorporates by this reference all allegations set forth in Paragraphs 1 -31 above.

33. The Defendants violated Iowa Code chapter 555A, in a manner including, but not limited to, selling merchandise at a place other than the Defendants' place of business and,

- a. at the time of the sale, failing to disclose the consumer's right to cancel in 10 point boldface type on the front of the contract or receipt, as required by Iowa Code § 555A.2;
- b. at the time of the sale, failing to provide the consumers with a "Notice of Cancellation" drafted with the form and content required by Iowa Code § 555A.3;
- c. at the time of the sale, failing to complete the two (2) separate copies of a "Notice of Cancellation", as required by Iowa Code § 555A.4(1);
- d. at the time of the sale, failing to orally inform the consumers of their right to cancel, as required by Iowa Code § 555A.4(3); and/or
- e. failing to honor valid cancellations by consumers and refund all payments made under the contract or sale within ten (10) business days of the cancellation, as required by Iowa Code § 555A.4(5).

Count II
Violations of the Assurance of Voluntary Compliance

34. The State incorporates by this reference all allegations set forth in Paragraphs 1 - 31 above.

35. The Defendants violated the Assurance of Voluntary Compliance⁵, in a manner including, but not limited to:

- a. failing to comply in all respects with the Iowa Door-To-Door Sales Act, Iowa Code chapter 555A;
- b. making deceptive and untrue representations to consumers;
- c. failing to promptly disclose the real purpose of a contact with a consumer using clear and conspicuous language;
- d. failing to inform consumers of the real purpose for the Defendants' desired presence at consumers' residence, using clear and conspicuous language, before requesting or otherwise seeking consumers' consent to the presence of Defendants at the consumers' residence;
- e. failing to inform consumers of all conditions for the delivery of a prize, gift or other free merchandise before requesting or otherwise seeking consumers' consent to the presence of Defendants at the consumers' residence;
- f. failing to immediately honor all requests from consumers that they not be further contacted by Defendants;
- g. failing to give a consumer the prize, gift or other free merchandise at the beginning of the in-residence visit which was promised to the consumer;
- h. failing to give a consumer the prize, gift or other free merchandise which was promised to a consumer in exchange for the performance of any act by the consumer other than attendance at an in-residence presentation;
- i. failing to timely respond to consumer complaints received from consumers, or from the Attorney General, within fifteen (15) business days from receipt of the complaints; and/or
- j. engaging in high pressure sales tactics when attempting to sell merchandise.

⁵ See attachment.

Count III
Violations of Iowa Prize Promotions Act - Iowa Code chapter 714B

36. The State incorporates by this reference all allegations set forth in Paragraphs 1 - 31 above.

37. The Defendants violated Iowa Code chapter 714B in a manner including, but not limited to:

- a. representing directly, or by implication that the number of persons eligible for the prize is limited. Iowa Code § 714B.3(1)(b);
- b. representing that consumers were winners or finalists, had been specially selected, were in first place, or were otherwise among a limited group of persons with an enhanced likelihood of receiving a prize; when in fact, the enterprise was a promotional scheme designed to make contact with prospective customers and all or a substantial number of those receiving the notice were awarded the same prize. Iowa Code § 714B.3(1)(c); and
- c. representing to a person that the person had been awarded a prize, but failing to provide the person with the prize within 30 days of making that representation. Iowa Code § 714B.4.

Count IV
Violations of Iowa Consumer Fraud Act - Iowa Code § 714.16

38. The State incorporates by this reference all allegations set forth in Paragraphs 1 - 31 above.

39. Pursuant to Iowa Code § 555A.6(2), each of Defendants' violations listed in Count I constitute a violation of Iowa Code § 714.16(2)(a).

40. Pursuant to paragraph 14 of the AVC signed by the Defendants, each of Defendants' violations listed in Count II constitute a violation of Iowa Code § 714.16(2)(a).

41. Pursuant to Iowa Code § 714B.7, each of Defendants' violations listed in Count III constitute a violation of Iowa Code § 714.16(2)(a).

42. Defendants have acted, used or employed deception, fraud, false pretense, false

promise, misrepresentation and/or concealment, suppression, or omission of material facts with the intent that consumers rely on the concealment, suppression or omissions, in violation of Iowa Code § 714.16(2)(a), in a manner including, but not limited to:

- a. representing that the purpose of Defendants' visit to the consumers' residence was to deliver a prize, gift or other free merchandise when the real purpose of Defendants' visit to consumers' residence was to induce a sale;
- b. representing to consumers that they would not have to listen to a sales presentation in order to receive their prize, gift or other free merchandise, when in fact some consumers were required to listen to a sales presentation as a condition for receiving a prize, gift or other free merchandise;
- c. failing to inform consumers that they would be required to listen to a sales presentation before receiving a prize, gift or other free merchandise, until after the Defendants were already at the consumers' residence;
- d. representing to consumers that they had "won" or otherwise been specially selected for a prize, gift or other free merchandise when, in fact, the prize, gift or free merchandise was merely a standard inducement used to persuade the consumer to accept a sales presentation;
- e. representing that a purchase by a consumer would result in the award of a prize, gift or other free merchandise to the individual that gave the consumer's name to the Defendants when, in fact, the supplier of the consumer's name did not receive a prize, gift or other free merchandise;
- f. representing to consumers that they had won a prize, gift or other free merchandise, but failing to deliver the prize, gift or other free merchandise; and/or
- g. representing to consumers that they would receive a prize, gift or other free merchandise if they provided Defendants with referrals, but failing to deliver the prize, gift or other free merchandise after consumers provided referrals.

43. Defendants have engaged in unfair practices in violation of Iowa Code §

714.16(2)(a), in a manner including, but not limited to:

- a. remaining in consumers' residences for an extended period of time after consumers requested that the sales presentation be ended;
- b. employing hostile and/or abusive language when consumers declined to purchase merchandise;

- c. disposing of the consumer's trade-in before the sale cancellation period has expired;
- d. retaining merchandise that consumers have returned for warranty work or other repairs for an unreasonably extended time period; and/or
- e. refusing to respond to consumer complaints about the sales presentation, faulty machines, slow repairs or other undesirable business practices.

REQUEST FOR RELIEF

44. The State respectfully requests that the Court order relief against Defendants Roger T. Carlson and Carlson Technologies, Inc., as follows:

A. That the Court, pursuant to Iowa Code § 714.16(7), permanently enjoin Defendants from:

- 1) selling consumer goods or services "door-to-door" within the meaning of the Iowa Door-To-Door Sales Act, unless Defendants comply in all respects with the requirements of Iowa Code chapter 555A;
- 2) representing to consumers that they have been, or will be, awarded a "prize", as defined in Iowa Code § 714B.1(4), unless Defendants comply in all respects with the requirements of Iowa Code chapter 714B;
- 3) any business practices employing the act, use or employment of deception, fraud, false pretense, false promise, misrepresentation; or the concealment, suppression or omission of a material fact with the intent that a consumer rely on that concealment, suppression or omission;
- 4) upon each contact with a consumer, failing to promptly disclose the real purpose of the contact using clear, conspicuous and unambiguous language;
- 5) before requesting or otherwise seeking consumers' consent to the presence of Defendants at the consumers' residence, failing to inform consumers of the real purpose for the Defendants' presence at consumers' residences using clear, conspicuous and unambiguous language;
- 6) disposing of any property or goods that consumers traded in for merchandise until the expiration of the three-day cancellation right provided by Iowa Code chapter 555A;
- 7) failing to immediately honor all requests from consumers that they not be further contacted by Defendants;
- 8) failing to immediately honor all requests from consumers that Defendants leave the

consumers' residences;

9) if a prize, gift or other free merchandise is promised to a consumer who agrees to an in-residence presentation; failing to give such prize, gift or other free merchandise to the consumer at the beginning of the in-residence visit;

10) if a prize, gift or other free merchandise is promised to a consumer in exchange for the performance of any act by the consumer other than attendance at an in-residence presentation; failing to give such prize, gift or other free merchandise to consumer immediately upon performance by consumer;

11) failing to timely respond to consumer complaints received from consumers, or from the Attorney General, within fifteen (15) business days from receipt of the complaints; and

12) engaging in abusive sales practices, including but not limited to high pressure sales tactics, when attempting to sell merchandise.

B. That the Court order Defendants to restore any money to consumers whom the Court deems to be entitled to restitution as a result of Defendants' unlawful acts or practices, pursuant to Iowa Code § 714.16(7).

C. That the Court void all sales contracts and finance agreements for consumers whom the Court deems to be entitled to such remedy as a result of Defendants' unlawful acts or practices, pursuant to Iowa Code § 555A.5 and/or Iowa Code § 714.16(7).

D. That the Court order each Defendant to pay a civil penalty to the State in an amount not to exceed \$40,000.00 per violation, pursuant to Iowa Code § 714.16(7).

E. That the Court order Defendants to pay a civil penalty to the State in an amount not to exceed \$5,000.00 for each day that Defendants were in violation of the AVC, pursuant to Paragraph 14 of the AVC incorporating Iowa Code § 714.16(7).


F. That the Court order Defendants to pay the State's costs including, but not limited to, reasonable attorney fees, court costs and investigative costs incurred in this action, pursuant to Iowa Code § 714.16(11).

G. That the Court award the State interest as permitted by law.

H. That the Court grant any further relief as the Court deems just and equitable.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

A handwritten signature in dark ink, appearing to read "Ben E Bellus", is written over a horizontal line.

BENJAMIN E. BELLUS PK0013390

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ATTORNEYS FOR THE STATE

IN RE:

Roger T. Carlson
d/b/a Carlson Technologies, Inc.
and Carlson Technologies, Inc.
d/b/a Tri-Star Distributing,

Respondents.

ASSURANCE OF
VOLUNTARY COMPLIANCE

STATE OF IOWA ex rel. Thomas J. Miller, Attorney General of Iowa, by Benjamin E. Bellus, Assistant Attorney General of Iowa (hereinafter "the Attorney General"), and Roger T. Carlson and Carlson Technologies, Inc., a Colorado Corporation d/b/a Tri-Star Distributing, enter into this Assurance of Voluntary Compliance pursuant to Iowa Code § 714.16 (2001), the Iowa Consumer Fraud Act.

The term, "Respondents," as used herein shall apply to Roger T. Carlson, Carlson Technologies, Inc., and to their agents, employees, directly or indirectly, individually or in concert with others, through any corporate or other device.

The term, "Consumers," as used herein shall apply to both potential purchasers of merchandise as well as actual purchasers of said merchandise.

Respondents engaged in the business of advertising, marketing and selling merchandise¹, including "Tri-Star" vacuum cleaners, through sales presentations in the homes of Iowa consumers. At all times relevant to this Assurance, Respondents' office was located at 7520 University Avenue, Suite 2, Des Moines, Iowa.

The Attorney General has received seventeen (17) formal complaints, as well as additional informal inquiries, from Iowa consumers since 1998. On March 1, 2002, the Attorney

¹ The term, "merchandise," as used herein, is as defined in Iowa Code § 714.16(1)(i).

General served an investigative subpoena on Respondents due to their failure to respond to investigative inquiries concerning eight separate consumer complaints. On March 18, 2002, Roger T. Carlson appeared in response to the subpoena and gave evidence on behalf of himself and Carlson Technologies, Inc.

ALLEGATIONS

The Attorney General alleges that, in the course of soliciting sales of merchandise, Respondents violated the Iowa Consumer Fraud Act by engaging in the following:

- failing to comply with Iowa Code chapter 555A, the Iowa Door to Door Sales Act, by failing to provide a full refund of all money paid by the consumers and/or all property or goods traded in, within ten (10) business days from receipt of the consumers' notice that the sale was cancelled;

- unfairly diminishing consumers' capacities to exercise their three day cancellation rights by disposing of the property or goods that consumers traded in for merchandise sold by Respondents before expiration of the three day cancellation period;

- - failing to resolve consumer complaints in a timely manner;
- - making deceptive statements as well as omitting material facts, both before and during sales presentations in a manner including, but not limited to:

- a. misrepresenting the real purpose of Respondents' visit to consumers' residence both orally and in writing (See Exhibit 1 for one example of written misrepresentation.);

- b. failing to inform consumers that they would be required to listen to a sales presentation before receiving a prize, gift or other free merchandise, until after the Respondents were already at the consumers' residence; and

- c. misrepresenting that a purchase by a consumer would result in the award of a prize, gift or other free merchandise to the individual that gave the consumer's name to the Respondents.

- - refusing to refrain from contacting consumers after being asked to do so.
- representing to consumers that they had "won" a prize, gift or other free merchandise and obtaining consumers' agreement to accept the prize, gift or other free merchandise, but failing to deliver the prize, gift or other free merchandise;
- representing to consumers that they would receive a prize, gift or other free merchandise if they provided Respondents with referrals, but failing to deliver the prize, gift or other free merchandise after consumers provided referrals; and
- using high pressure sales tactics including, but not limited to:
 - a. remaining in consumers' residence for extended periods after consumers requested that the sales presentation be ended;
 - b. employing hostile and/or abusive language when consumers declined to purchase merchandise; and
 - c. scattering rubbish and trash around consumers' residence after consumers declined to purchase merchandise.

The Attorney General contends that the above-noted acts, statements and omissions by Respondents in relation to efforts to sell merchandise to Iowa consumers constituted deception, unfair practices or omissions with intent that others rely, and thus, violated the Consumer Fraud Act.

Respondents dispute the Attorney General's allegations. This Assurance is intended to resolve the dispute between the Attorney General and Respondents. In entering into this Assurance, Respondents admit no liability whatsoever under the Consumer Fraud Act or any other law.

RESOLUTION

Respondents agree to comply with the following from the date of the signing of this Assurance:

1. Respondents shall comply in all respects with the Iowa Door to Door Sales Act, Iowa Code chapter 555A, a copy of which has been delivered to Respondent Roger T. Carlson.
2. Respondents shall not make any deceptive² or untrue representations to any consumer.
3. Upon each contact with a consumer, Respondents shall promptly disclose the real purpose of the contact using clear and conspicuous language. (For example, when Respondents contact a consumer to arrange an in-home sales presentation, Respondents shall immediately disclose that the purpose of the meeting is to sell merchandise.)
4. Before requesting or otherwise seeking consumers' consent to the presence of Respondents at the consumers' residence, Respondents shall inform consumers of the real purpose for the Respondents' presence at consumers' residence using clear and conspicuous language. (For example, when Respondent contacts a consumer to arrange an in-home sales presentation, Respondent shall clearly and conspicuously disclose that the purpose of the meeting is to sell merchandise and not just to deliver a prize, gift or other free merchandise.)
5. Before requesting or otherwise seeking consumers' consent to the presence of Respondents at the consumers' residence, Respondents shall inform consumers of all conditions for the delivery of any prize, gift or other free merchandise including, but not limited to, the consumers' participation in a sales presentation.
6. Respondents shall not dispose of any property or goods that consumers traded

² The term "deceptive" or "deception," as used herein, is as defined in Iowa Code § 714.16(1)(f).

in for merchandise until the expiration of the three day cancellation right provided by chapter 555A.

7. Respondents shall immediately honor all requests from consumers that they not be further contacted by Respondents.

8. If a prize, gift or other free merchandise is promised to a consumer who agrees to an in-residence presentation; such prize, gift or other free merchandise shall be given to the consumer at the beginning of the in-residence visit.

9. If a prize, gift or other free merchandise is promised to a consumer in exchange for the performance of any act by the consumer other than attendance at an in-residence presentation; such prize, gift or other free merchandise shall be given to consumer immediately upon performance by consumer.

10. Respondents shall timely respond to consumer complaints received from consumers, or from the Attorney General, within fifteen (15) business days from receipt of the complaints. Failure to respond to any complaint within the 15-day limit shall create the irrebuttable presumption that the consumer is entitled to a full cancellation of any contract as well as a full refund of any funds paid by consumers and a return of any property or goods traded in by consumers (or the replacement value of the property or goods if the Respondents cannot return them); and/or the delivery of any prize, gift or other free merchandise promised to consumer.

11. Respondents shall not engage in high pressure sales tactics when attempting to sell merchandise including, but not limited to:

- a. Using abusive or hostile language during any contact with consumers;

- b. Causing any damage or spoilation to property or residence of consumers;
- c. Retaliating against any consumer who declines a sales presentation or any other solicitation for the consumer to purchase merchandise from Respondents. For purposes of this provision, "retaliation" includes, but is not limited to, any hostile or abusive language or any physical act causing spoilation, injury or damage to the consumers or their property; or the causing of a reasonable belief on the part of the consumers that the Respondents will cause spoilation, injury or damage to the consumers or their property; or
- d. Remaining in a consumer's residence for an unreasonable period of time when making a sales presentation, or for any period of time after being asked to leave by a consumer. Whether a period of time is "unreasonable" for these purposes depends on the totality of the circumstances, including the amount of time typically required to present the merchandise in question and the extent to which additional time is required to respond to questions initiated by the consumer.

Without limiting the foregoing, there shall be a rebuttable presumption that a sales presentation exceeding forty-five (45) minutes is unreasonable unless, within the forty-five minute period, the consumer signs a contract to purchase merchandise from Respondents and, thus, additional time is required to review, explain, and otherwise process the necessary documents.

Respondents are hereby put on notice that failure to vacate a consumer's residence after being requested to vacate the residence may lead to a criminal charge of Trespass pursuant to Iowa Code § 716.7 (2001), independent of this Assurance..

12. Respondents shall address the below-listed consumer complaints within ten (10) business days of the signing of this Assurance by supplying all prizes, gifts or other free merchandise offered as an inducement for the consumers to listen to a sales presentation, and/or providing full refunds, and/or returning any property or goods traded in by consumers (or the replacement value of the property or goods if the Respondents cannot return them); where deemed appropriate by the

Attorney General:

- a. Joel T. Miller;
- b. Thomas D. Newell;

- c. Linda K. Vandrluo;
- d. Hillis and Sharon Rupe;
- e. Katherine and Jason Tracy;
- f. Jeremy Arndt;
- g. Nancy Johnson; and
- h. Elizabeth and Edward Disbrow.

13. Respondents shall make a payment to the Attorney General in the sum of \$1,000.00 to be used for consumer education and litigation. Payment shall be received by the Attorney General no later than ten (10) days from the date of signing of this Assurance.

14. Respondents agree that a violation by Respondents of any requirement of this Assurance shall constitute a violation of the Iowa Consumer Fraud Act, Iowa Code § 714.16; and that violations by Respondents of any requirements of this Assurance shall constitute a violation of this contractual agreement with the State entitling a court to impose civil penalties against Respondents pursuant to Iowa Code § 714.16(7) as if the Respondents had violated a court injunction.

15. Respondents agree that this Assurance shall not in any way bar the Attorney General from taking further action regarding Respondents' solicitation of sales or sales of merchandise.

The parties agree that this Assurance will become binding and effective on Respondents when signed by Roger T. Carlson.

Respondents agree to abide by the terms of this Assurance and acknowledge receipt of a copy of it.

Roger T. Carlson
Carlson Technologies, Inc. d/b/a Tri-Start Technologies,
by its owner and president, Roger T. Carlson

Executed before the undersigned Notary Public on this 26th day of March,
2002.

Janice M. Bloes
Notary Public in and for the State of Iowa



Roger T. Carlson
Roger T. Carlson, individually

Executed before the undersigned Notary Public on this 26th day of March,
2002.

Janice M. Bloes
Notary Public in and for the State of Iowa



THOMAS J. MILLER,
ATTORNEY GENERAL OF IOWA

by: B. E. Bellus
BENJAMIN E. BELLUS
Assistant Attorney General
Consumer Protection Division

First Notice

Immediate Action Required

We are holding an item of
merchandise for you.

Please Call

271-9478

for delivery information

We are holding an item of merchandise for you. However, merchandise must be delivered by the **Final Claim Date** or **Claim is Void**.

Claim Date: 23 JUN 1999

Calls Will Be Accepted

Office Hours:

Mon. - Fri. - 11:00 A.M. - 9:00 P.M.

Saturday - 9:00 A.M. - 3:00 P.M.

First Notice • First Notice • First Notice

Merchandise compliments of Tri-Star
Subject to company rules

